

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

## SAN FRANCISCO DIVISION

-----X

6 IN RE TESLA, INC.

## 7 SECURITIES LITIGATION

Civil Action No.

3:18-cv-04865-EMC

-----X

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## REMOTE DEPOSITION OF RYAN BRINKMAN

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16 Reported by:

17 MARY F. BOWMAN, RPR, CRR

18 JOB NO. 193519

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2 RYAN BRINKMAN,

3 called as a witness by the parties,

4 having been duly sworn, testified as

5 follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 First of all, could you state

14 your full name for the record.

15 A. Ryan Joseph Brinkman.

[REDACTED]

7 Q. And that brings us neatly to the  
8 next question which is can you briefly  
9 outline your employment here? What have  
10 you done since you moved to New York?

11 A. Right. I started in New York  
12 working for Bear Stearns as an associate or  
13 junior analyst on that company's U.S. autos  
14 and transportation equipment team, and I  
15 did that from April of 2007 until the  
16 merger with JP Morgan in June of 2009.

17 And then I was the junior on U.S.  
18 autos and auto parts team from June of 2009  
19 until May of 2011. And then -- I am sorry,  
20 June of '08, it would have been until May  
21 of 2010.

22 And then from May of 2010 until  
23 May of 2012, I was vice president on the  
24 hard lines retail equity research team at  
25 Goldman Sachs focusing in particular on the

1  
2 automotive after market.

3                   And then in May of 2012, I  
4 resigned from Goldman Sachs to return to JP  
5 Morgan. There was a 60- or 90-day garden  
6 leave when I was in between the two  
7 companies.

8                   And then beginning around I think  
9 June or July of 2010, July of 2012, I  
10 initiated on -- I became the senior U.S.  
11 autos analyst at JP Morgan covering U.S.  
12 autos and auto parts and I've been doing  
13 that job ever since.

14                 Q.     So you are still the senior U.S.  
15 auto analyst at JP Morgan?

16                 A.     Yes.

17                 Q.     Do you report to anyone at JP  
18 Morgan?

19                 A.     Yes, I report to the director of  
20 equity research at JP Morgan -- of Americas  
21 equity research.

22                 Q.     Could you briefly describe what  
23 your job as senior U.S. auto analyst at JP  
24 Morgan entails?

25                 A.     Sure. The primary day-to-day job

1  
2     is I rate about 35 autos-related stocks  
3     overweight, neutral or underweight,  
4     providing these recommendations to  
5     institutional investors, mutual funds,  
6     hedge funds, insurance companies, et  
7     cetera, and recommend whether they should  
8     have more than a benchmark weighting or --  
9     overweight position in a certain stock, an  
10    equal weight or a neutral, or an  
11    underweight position, which suggests that  
12    they should have less than is included in  
13    their benchmark in their portfolio.

14               I also develop price targets to  
15    try to suggest where the stocks could or  
16    should go and I formulate earnings  
17    estimates, I try to guess how much, you  
18    know, revenue, earnings, cash flow, all of  
19    the lines of the income statement, balance  
20    sheet and cash flow statement that these  
21    companies will generate for the next couple  
22    to several years typically.

23               And I author notes that describe  
24    the company's earnings, my outlook, not  
25    just the company, but the auto industry

1

2 generally, that's one part of what I do.

3 Another part of what I do is to  
4 be a consultant to economists at JP Morgan,  
5 Chase Auto Finance, different aspects of  
6 the bank.

The image consists of a series of horizontal black bars of varying lengths, arranged vertically. The bars are solid black and have thin white borders. They are positioned against a white background. The lengths of the bars vary significantly, with some being very short and others being quite long, creating a visual pattern of horizontal stripes.

2           Q.     Now, specifically in connection  
3     with Tesla, which is the one of the  
4     companies you followed, what information  
5     sources were you looking at as part of your  
6     following of Tesla?

7           A.     In general or during the time  
8     period in question?

9           Q.     Let's talk about 2018. Let's  
10    start in like July 2018. What news sources  
11    were available to you then and that you  
12    were reading?

13          A.     Sure. So the company would  
14    release quarterly deliveries numbers that  
15    would come out in the first part of July.  
16    That's a note that we would publish on.  
17    Any other releases, earnings that would  
18    come up from the company itself, certainly  
19    we would publish on.

20               Then I mentioned a Bloomberg  
21    being the primary news source and Bloomberg  
22    pulls in news articles from all sorts of  
23    different publications, New York Times,  
24    whatever, and so that's kind of my news  
25    aggregator typically, but as mentioned

1

2 also, AutoNews.com, WardsAuto.com, those  
3 are some of my go-to resources for news  
4 that's happening on the industry and they  
5 oftentimes write on Tesla as well.

6 Q. So if in the morning, you saw  
7 there was a headline in connection with  
8 Tesla, is that something you would read  
9 straight away, save it for a few days? How  
10 up to date do you keep in connection with  
11 Tesla at this time?

12 A. I mean, I typically, when I would  
13 sit at my desk and the office would have  
14 kind of two screens and one would just be a  
15 rolling news flow. I don't always catch  
16 everything, and I'm in meetings and stuff,  
17 and that's why the important news flow, we  
18 try to e-mail around within the team.

19 But generally speaking, I am  
20 watching or trying to watch headlines  
21 throughout the day as they develop.

22 Q. Did you follow Elon Musk on  
23 Twitter?

24 A. He was the first person I  
25 followed on Twitter, I believe, yeah, I

1

2     felt like I needed to as part of my job.

3           Q.     Why did you feel you needed to as  
4     part of your job?

5           A.     Because it was a commonly -- to  
6     comment upon occurrence back in the earlier  
7     time period when they were a public company  
8     that oftentimes breaking or important news  
9     would be communicated via Twitter and there  
10    was a lot of discussion about that and in  
11    the financial media.

12               Twitter and all social media  
13    sites like Facebook, et cetera, are  
14    typically blocked on corporate internets,  
15    at least on Wall Street. And so the  
16    analysts didn't necessarily have access to  
17    that and I think it was in response to  
18    Elon's Twitter practices that Bloomberg  
19    actually incorporated Twitter into their  
20    feed.

21               So I could see the Twitter, the  
22    Tweets from Tesla, Elon, via Bloomberg.  
23    But also, you know, whenever I would be out  
24    and about on my phone, et cetera, I would  
25    just like to get alert when he would tweet

1  
2 something so I know I'm up to speed in case  
3 a client would call and ask about it, et  
4 cetera.

A series of 20 horizontal black bars of varying lengths, arranged vertically from top to bottom. The bars are of uniform thickness and are set against a white background. The lengths of the bars decrease sequentially from top to bottom, creating a visual effect of descending steps or a staircase.

A series of 15 horizontal black bars of varying lengths, starting with a short bar and ending with a very long bar.

21 Q. So I'm placing before the witness  
22 a document marked as Exhibit 8, a Tweet  
23 from Elon Musk dated August 7, 2018.

24 I'll ask the witness if he  
25 recognizes this document?

1           A.     Yes, I do.

2           Q.     Do you recall when you first saw  
3        this document?

4           A.     Yes. It was toward the end of  
5        the trading day on the date in question.  
6        It was the day before my annual automotive  
7        conference. I remember it well.

8           Q.     So you did not see this when it  
9        was -- I'll represent to you this was  
10      issued at 9:48 a.m. Pacific, so 12:48 p.m.  
11      Eastern time.

12           And you did not see this  
13      before -- you did not see this at the time  
14      it was issued?

15           A.     So the first thing I noted was  
16      that these headlines were crossing on  
17      Bloomberg about an Elon Musk tweet and the  
18      share price was reacting, and it's then  
19      that I picked up my phone and opened my  
20      Twitter to see if it was real, and saw that  
21      Elon, or at least Elon's account, had  
22      posted that, um-hum. So first I saw the  
23      headlines and then the tweet.

24           Q.     Are you aware that trading in

1  
2 Tesla stock was halted during the course of  
3 the afternoon of August 7?

4 A. Yes.

5 Q. Did you learn that in real time  
6 or was that as part of what you were  
7 responded to these headlines?

8 A. I was glued to my Bloomberg  
9 screen watching every development as it  
10 transpired.

11 Q. Do you recall when in the day you  
12 started sort of closely following Tesla on  
13 that day?

14 A. Immediately, within minutes of  
15 when the stock moved.

16 Q. OK, so after the -- within  
17 minutes of the "funding secured" Tweet,  
18 Exhibit 8 that we have put in front of you?

19 A. Yes.

20 Q. Do you recall if you received any  
21 questions or queries regarding what was  
22 going on with the Tesla stock during that  
23 afternoon?

24 A. I don't recall any specific  
25 inquiries, but I'm sure there were many.

1           Q.     And at least within JP Morgan?

2           A.     Probably my sales trader who  
3     trades stock for clients.  Perhaps  
4     salespeople.  Perhaps clients.  Most likely  
5     clients and, you know, team members.  There  
6     was a lot of interest.

7           Q.     Why don't -- do you recall your  
8     first reaction when reading this tweet,  
9     Exhibit 8?

10          A.     I was shocked.

11          Q.     OK, why were you shocked?

12          A.     Well, I wasn't expecting the  
13     company, A, to be taken private and for the  
14     shares to gap up.  I had an underweight  
15     rating on the stock and thought that it was  
16     overvalued and wouldn't have imagined that  
17     somebody would come in with a seemingly  
18     cash offer like that.

19           And then B, I was also surprised  
20     by the manner in which the announcement was  
21     taking place, that it was taking place  
22     during the market, before the stock was  
23     halted, and on Twitter, and not -- it was a  
24     statement from the CEO as opposed to some

1

2 sort of press release by the company. Or  
3 an 8-K SEC filing.

4 Q. Do you recall that Tesla  
5 previously announced major corporate  
6 transactions via a more regular press  
7 release or -- rather than via Twitter?

8 A. Nothing on the order of this  
9 magnitude. I think there were  
10 announcements that were made that were  
11 notable that they were taking place on  
12 Twitter instead of press releases, and we  
13 discussed that earlier, that Bloomberg  
14 started incorporating Twitter into the news  
15 feed as a result of that.

16 But nothing like this. No.

17 Q. Did you continue to monitor  
18 statements by Mr. Musk regarding this  
19 potential going private transaction during  
20 the afternoon of August 7?

21 A. Yes.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8 Q. So I placed before the witness, a  
9 document marked Exhibit -- Exhibit 10,

15 Q. It's another Tweet or  
16 screenshot'd Tweet sent by Mr. Musk. In  
17 particular, this ones had -- starts, "My  
18 hope is all current investors stay with  
19 Tesla, even if we're private."

20 Do you see that?

21 A. Yes.

22 Q. Do you recall seeing this Tweet  
23 during the afternoon of August 7, 2018?

24 A. Yes.

25 Q. Do you see this Tweet refers to

1  
2 "would create special purpose fund enabling  
3 anyone to stay with Tesla," do you see that  
4 there?

5 A. Yes.

6 Q. Do you recall having any reaction  
7 to that suggestion in Mr. Musk's Tweet in  
8 at 11 a.m.?

9 A. Yes.

10 Q. What was that reaction?

11 A. Again, shock and confusion, and I  
12 felt like my understanding of the situation  
13 was becoming even less clear than before.

14 I didn't understand why if the  
15 company was being taken private that all  
16 shareholders would continue to be able to  
17 participate in the company. It didn't seem  
18 to me at first to make a whole lot of  
19 sense. Yeah.

20 Also, I was doubting the -- how  
21 this could work. I think, you know, to  
22 participate in private companies of this  
23 sort, I believe you might have to be a  
24 qualified investor with a certain amount of  
25 assets or income or something like that.

1

2 It so it just seemed kind of strange and I  
3 was a little confused by it.

[REDACTED]

[REDACTED]

6 Q. Just in response to your last  
7 testimony about -- did you reach out about  
8 your confusion -- in response to that 11  
9 a.m. Tweet of Exhibit 10, did you reach out  
10 to anyone within JP Morgan that might have  
11 experience in going-private transactions or  
12 anything like that to try and better  
13 understand what Mr. Musk seemed to be  
14 proposing in these Tweets?

15 A. No, I don't think so.

16 Q. This is just based on your  
17 industry experience at this point 11 years  
18 in the industry?

19 A. Yeah, I mean, I was unfamiliar  
20 with the ability for the public to  
21 participate in privately-held companies in  
22 the same way that they would in public  
23 companies. I hadn't heard of that before.

[REDACTED]

[REDACTED]

3 Q. So I have it placed before the  
4 witness a document marked as Exhibit 11.

9 Q. A Tweet at 11:13 a.m.,  
10 "Shareholders could either to sell at 420  
11 or hold shares and go private."

12 Do you see that?

13 A. Yes.

14 Q. Again, do you recall seeing this  
15 Tweet during the afternoon of August 7?

16 A. Yes.

17 Q. What was your reaction to the --  
18 this is the second e-mail we see now of  
19 this potential price of 420 per share. Do  
20 you recall having any reaction to that  
21 price level?

22 A. Yes, I mean, there were a number  
23 of media articles within moments, I  
24 believe, of when the first Tweet came out  
25 that were wondering whether Elon's account

1  
2 had been hacked or whether this was, in  
3 fact, a joke including a potential allusion  
4 to April 20, 4/20, a common marijuana  
5 allusion that Elon had, I believe,  
6 referenced a number of times on Twitter  
7 before.

8 Q. Did you think that Elon's account  
9 might have been hacked?

10 A. That was my first reaction when I  
11 first saw the headline that Elon had  
12 Tweeted taking the company private at 420 a  
13 share.

14 First of all, the 4/20 reference,  
15 I thought that was a possible reference to  
16 hacking, although it could have also been a  
17 joke. And then I thought the CEO of a  
18 company wouldn't joke about this, so I  
19 thought maybe it was a hack.

20 And it was only when he continued  
21 to reply to other investors with additional  
22 details and appeared serious that I began  
23 to believe that it was not a hack which was  
24 I think fully confirmed that evening when  
25 the company had made some sort of e-mail

1  
2 from Elon to employees public, that's when  
3 I concluded that it certainly was not a  
4 hack.

5                   But within probably half an hour  
6   or so, I was comfortable it was not a hack.

The image consists of a series of horizontal black bars of varying lengths, arranged vertically. The bars are solid black and have thin white borders. They are positioned against a plain white background. The lengths of the bars vary significantly, with some being very long and others very short or non-existent.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 Q. I place before the witness a  
7 document marked as Exhibit 12. The  
8 document entitled "Taking Tesla Private."

9 A. Yes, I see it.

10 Q. Was this the document you were  
11 referring to just in your prior testimony?

12 A. Yes.

13 Q. And what was it about this  
14 document that confirmed for you the reality  
15 of this proposal that I previously  
16 mentioned in the Tweets from Elon Musk?

17 A. It was notable to me that it was  
18 on a Tesla corporate website. It wasn't a  
19 personal website of Elon Musk.

20 So now we have some sort of  
21 document that is an official Tesla document  
22 referring to the go-private consideration  
23 which, in my mind, gave more veracity to  
24 Elon's earlier Tweets.

25 It did stand out in my mind that

1  
2 it wasn't a press release from the company.  
3 It wasn't the company necessarily speaking  
4 to investors and analysts. It was the  
5 revelation of an internal e-mail to its  
6 from Elon to his employees and that seemed  
7 interesting to me, and it was different  
8 than a press release from the company and,  
9 yet, it was on a company website.

10 I have to make decisions about  
11 what I am going to be doing, what I'm going  
12 to be publishing, and I wasn't getting all  
13 the answers I was looking for.

14 So I was still a little confused,  
15 but clearly, it means there -- it could not  
16 have been a hack unless Tesla's corporate  
17 website was also hacked. So I was moving  
18 more in the direction of this was certainly  
19 real.

20 Q. At the end of that first or  
21 second paragraph, the first really long  
22 paragraph, there is a sentence, it says, on  
23 Exhibit 12, "Finally, as the most shorted  
24 stock in the history of the stock market,  
25 being public means there are large numbers

1  
2 of people who have the incentive to attack  
3 the company."

4                   Do you see that?

5                   A.     Yes.

6                   Q.     What was your understanding of  
7 the time of the short interest in Tesla on  
8 August 7, 2018?

9                   A.     Throughout most of the time -- I  
10 don't recall what it was exactly on that  
11 date, but throughout most of the time --  
12 the shortage today is 5 percent, very low,  
13 but most of the time I've covered the  
14 company, it's generally a range between 20  
15 and 35 percent, I would estimate.

16                  Q.     Is that a high level of short  
17 interest in your experience?

18                  A.     For sure, particularly of a firm  
19 of its market capitalization.

20                  Q.     What does that mean? Does that  
21 have any effect on your views of the  
22 company?

23                  A.     Well, if there is a high short  
24 interest, it would alert me to the fact  
25 that others may have bearish views about

1  
2     this company and I should be aware of why  
3     people are short.

4                 Also, it provides upside risk in  
5     the event that those investors are wrong  
6     and there could be a short squeeze. So  
7     those are the two primary reasons that I  
8     would pay attention to a short interest.

9                 Q.     You just mentioned a short  
10     squeeze. Could you explain what that  
11     means?

12                 A.     Well, as investors, when you are  
13     long a stock, of course you could only lose  
14     your principal. But if you're short a  
15     stock -- because the stock can only go from  
16     where it is to zero.

17                 But if you are short a stock,  
18     theoretically there is no limit to the  
19     amount at which it can rise. We have seen  
20     some big short squeezes in the auto  
21     industry before including in Volkswagen  
22     shares, and of course, more recently  
23     outside the industry in Game Stop, et  
24     cetera.

25                 So that's what I would be

1  
2 concerned about if everybody was short and  
3 in an underweight rating, that could  
4 provide some risk to an underweight rating.

5 Q. And what happens when a short  
6 squeeze is occurring? What happens to the  
7 stock price then?

8 A. It rises, causing shorts to need  
9 to buy to cover, causing the shares to rise  
10 even more, causing even more to buy to  
11 cover. That's typically I think the  
12 definition.

13 Q. Is there a particular time period  
14 that a short squeeze occurs? Does it take  
15 days, weeks, months, hours, minutes? Is  
16 there any particular time period?

17 A. I think it could happen very  
18 quickly. It could feed on itself, the  
19 faster it rises. We just saw, for example,  
20 in the case of some meme stocks earlier  
21 this year, short squeezes that happened  
22 much more quickly than probably most  
23 participants would have imagined.



The image consists of a series of horizontal black bars of varying lengths, arranged vertically. The bars are solid black and have thin white borders. They are positioned against a plain white background. The lengths of the bars vary significantly, with some being very long and others very short, creating a visual pattern of horizontal segments.

22 Q. When you were -- on the afternoon  
23 of August 7, did you think that there might  
24 be a potential for SpaceX to be involved in  
25 this going-private transaction with Tesla?

1  
2       A.     No. I think there was already  
3 speculation that the Saudi investment fund  
4 was more likely -- I didn't myself think  
5 that SpaceX was involved.

6       Q.     When you say there was already  
7 speculation that the Saudi investment fund  
8 may be involved, what are you referring to?

9       A.     I can't recall. I think -- I'm  
10 wondering if when I first heard about Saudi  
11 investment fund, whether it was before or  
12 after the Tweet. I think it was before.

13              I think they may have already had  
14 a stake and so there was some speculation,  
15 maybe I read some media articles about  
16 Saudi Arabia wanted to diversify away from  
17 oil and gas and petro chemicals, I'm not  
18 sure.

19              Certainly, SpaceX is a private  
20 company itself that attracts external  
21 investors with capital. They don't have  
22 large amounts of cash, certainly didn't at  
23 the time.

24              In terms of who even could take  
25 Tesla private, especially for somebody who

1  
2 had funding secured, who has, you know,  
3 tens and tens and tens of billions of  
4 dollars just at the ready, the Saudi  
5 investment fund was an obvious candidate.

6 There could also be other  
7 sovereign wealth funds, maybe out of Norway  
8 or Singapore, that perhaps could have  
9 footed a bill like that.

10                   But it was relatively few  
11       number of companies that could make an  
12       offer like that without, I think, making it  
13       obvious that they were trying to raise  
14       capital, et cetera. So they were probably  
15       at the top of a short list for a number of  
16       market participants.

| Term       | Percentage |
|------------|------------|
| GMOs       | ~95%       |
| Organic    | ~95%       |
| Natural    | ~95%       |
| Artificial | ~75%       |
| Organic    | ~75%       |
| Natural    | ~75%       |
| Artificial | ~75%       |
| Organic    | ~75%       |
| Natural    | ~75%       |
| Artificial | ~75%       |
| Organic    | ~75%       |
| Natural    | ~75%       |
| Artificial | ~75%       |
| Organic    | ~75%       |
| Natural    | ~75%       |
| Artificial | ~75%       |

2           Q.     So placed before the witness a  
3 document marked Exhibit 13, another Tweet  
4 from Mr. Musk. First sentence of which  
5 reads investor support is confirmed.

6                   Do you recall seeing this Tweet  
7 on the August 7?

8           A.     Yes.

9           Q.     Do you recall what your reaction  
10 was to this Tweet?

11          A.     Yes. And I wrote about it in the  
12 note that I published.

13                   This was important for my  
14 thinking, my reaction was, again, surprise,  
15 but at the same time, you know, it was  
16 really sort of completing in my mind the  
17 questions that I had. It was stating the  
18 only reason why this is not certain to go  
19 private offer is that it's contingent on a  
20 shareholder vote.

21                   So that implied a number of  
22 things in my mind and I think by logical  
23 necessity as well because there is a number  
24 of things that need to happen in order for  
25 a company to be taken private.

1  
2                 First of all, there needs to be a  
3 formal offer from the acquirer. It needs  
4 to be approved by the acquirer's board of  
5 directors. It needs to be approved by the  
6 company being taken private by their board,  
7 and so -- now I did not see any kind of  
8 statement from Tesla as mentioned --  
9 nothing about the board of directors having  
10 approved this offer.

11                 But I -- when he says investor  
12 support is confirmed, only reason why it's  
13 not certain is because it's contingent on  
14 shareholder vote, that tells me that he has  
15 got a the approval of the board of  
16 directors of Tesla, maybe they haven't  
17 officially voted, but he has consulted with  
18 them as you would imagine before the CEO  
19 would go public saying he is considering  
20 taking the company private. And I imagine  
21 that the board of directors had given Elon  
22 a verbal OK and that the financing had been  
23 secured and -- first of all because that's  
24 another requirement for a company being  
25 taken private apart from a shareholder vote

1  
2     is the funding needs to be lined up and  
3     then there is the other Tweet saying the  
4     funding was secured.

5                 So this Tweet was important  
6     because it suggested in my mind that those,  
7     all those other things were true. Of  
8     course, I also had doubts as mentioned  
9     earlier, the fact that it was a Tweet, that  
10    wasn't a press release from the company,  
11    per se, there wasn't an 8K.

12                 [REDACTED]  
13                 A.     I was weighing these things, this  
14     was an important Tweet, important  
15     statement. This was a strong statement,  
16     just like funding secured, this is another  
17     one that strongly supports that this is  
18     really happening.

19                 And then I had to weigh that in  
20     my mind against the unconventional nature  
21     of the announcement and the fact that it  
22     was a Tweet and not an 8-K filing and  
23     things of that sort.

24                 But this was an important source  
25     of information for my writing the note

1

2 later that evening.

[REDACTED]

[REDACTED]

[REDACTED]

6 What do you understand "funding  
7 being secured" to mean?

8 A. So I thought -- it means that the  
9 funding is secured. Right. That the  
10 funding has been lined up. It's not in  
11 question. It's secured. It's not  
12 insecure.

13 I assumed that that meant that  
14 there has been a Wall Street bank or more  
15 likely consortium of banks that have lined  
16 up or committed to lining up this financing  
17 or -- as speculated by myself at the time  
18 potentially and I think in other sources as  
19 well -- maybe funding didn't need to be  
20 lined up by Wall Street because it was  
21 already there because it was such a deep  
22 pocketed acquirer of which of course there  
23 are a few in the world. I mean, Warren  
24 Buffet could do it, Berkshire Hathaway,  
25 although certainly that never crossed my

1  
2 mind. But the Saudi investment fund and  
3 some other sovereign wealth funds with some  
4 capital from Scandinavia or East Asia.  
5 Very few probably.

6 Q. But you understood it to be some  
7 commitment to funding?

8 A. Either a commitment to funding or  
9 that it was already there and so didn't  
10 need to be lined up because they were in  
11 ownership, the acquirer already had that  
12 capital.

13 Q. When you see here "investor  
14 support is confirmed," what did you  
15 understand "investor support" to mean?

16 A. Well, this is confusing because  
17 what does it mean? Does the mean the Tesla  
18 shareholders themselves? Because they are  
19 just learning about this now. So I don't  
20 see how he could have confirmed support  
21 amongst his own shareholders.

22 And he did say in the other Tweet  
23 that it is contingent on a shareholder  
24 vote. So that didn't seem to me what was  
25 meant by investor support confirmed.

1  
2                   But again, I was confused. So I  
3 thought perhaps that meant the support of  
4 representatives of Tesla investors, like  
5 the board of directors, for example. Or  
6 maybe the investors that are the new  
7 investors that are coming in like the  
8 acquirer.

9                   It wasn't really clear, but it  
10          couldn't have been in reference to the  
11          common stockholder. That would need to go  
12          through the vote process. But perhaps it  
13          was in reference to the common stockholders  
14          representatives which are the board of  
15          directors.

| Term       | Percentage |
|------------|------------|
| GMOs       | ~95%       |
| Organic    | ~95%       |
| Natural    | ~95%       |
| Artificial | ~95%       |
| Organic    | ~95%       |
| Natural    | ~95%       |
| Artificial | ~95%       |
| Organic    | ~95%       |
| Natural    | ~95%       |
| Artificial | ~95%       |

[REDACTED]

12 Q. I have placed before the witness  
13 a document marked as Exhibit 14. It is  
14 Bates stamped JPMS 16045. Do you see that  
15 document in front of you?

16 A. Yes.

17 Q. Do you recognize this document?

18 A. Yes.

19 Q. What is this document?

20 A. So at JP Morgan, research  
21 analysts can make changes to their price  
22 targets of less than 20 percent without  
23 requesting the approval of management, but  
24 if they request a price target change up or  
25 down of more than 20 percent or they want

1  
2 to effect a ratings change from one of our  
3 three ratings to another, it requires the  
4 approval of one of the top members of  
5 management, one of the top three members of  
6 management in the research -- the Americas  
7 research department. And that's what this  
8 e-mail EQR approval request is, when you  
9 want approval for a ratings change or a  
10 price target change of that type.

11 So I felt I needed to raise my  
12 price target on Tesla by more than 20  
13 percent as a consequence of the events that  
14 have day. So I e-mailed the management  
15 requesting the approval, I provided the  
16 rationale there and I also pasted below my  
17 rationale the actual text of the note which  
18 I had already drafted.

19 Q. So this e-mail got the time stamp  
20 here of 2:29 and 51 seconds, I will round  
21 it up 2:30 a.m. But as previously stated,  
22 I think that was UTC time, so that would be  
23 10:30 p.m. New York time.

24 Does that reflect your  
25 recollection this was late at night that

1  
2 you were sending this update?

3           A.       Yes, this was the evening before  
4 my annual automotive conference. I was  
5 hosting a number of dinners that day. I  
6 came back from the dinners to write the  
7 Tesla note and after writing it, e-mailed  
8 management.

9           Q.       This e-mail reflects your  
10      thoughts about Tesla and potential price  
11      target following August -- the events of  
12      August 7, 2018?

13 A. Yes.

The figure is a horizontal bar chart with 10 bars. Each bar's width corresponds to a range of 0.1 on the x-axis. The y-axis represents the frequency of numbers in each range. The distribution is roughly uniform, with most bars reaching a height of 100. A few bars show lower frequencies: the first bar (0-0.1) is at 100, the second bar (0.1-0.2) is at 10, the third bar (0.2-0.3) is at 100, the fourth bar (0.3-0.4) is at 100, the fifth bar (0.4-0.5) is at 100, the sixth bar (0.5-0.6) is at 100, the seventh bar (0.6-0.7) is at 100, the eighth bar (0.7-0.8) is at 100, the ninth bar (0.8-0.9) is at 100, and the tenth bar (0.9-1.0) is at 100.

Page 72

18 Q. So I placed before the witness a  
19 document marked as Exhibit 15.

24 Q. It is noted dated 8th of August  
25 2018. It is Bates stamped JPMSP 00047. It

1  
2 refers to 61.

3                   Have you had a chance to glance  
4 through this document, Mr. Brinkman?

5                   A.     Yes.

6                   Q.     Do you recognize this document?

7                   A.     Yes.

8                   Q.     What is this document?

9                   A.     This is the note that I wrote in  
10 response to the events that we were talking  
11 about earlier and was published overnight  
12 and it was remaining underweight.

13                  And yet, increasing my price  
14 target very materially from 195 dollars to  
15 308 dollars. As a consequence of, as we  
16 mentioned earlier, there were, you know, I  
17 wanted to take a middle-of-the-road  
18 approach.

19                  There were a lot of reasons to  
20 think there was a lot of veracity to this  
21 and then there were also some lingering  
22 concerns including that there was still not  
23 a press release by the company and whatnot.  
24 There was the blog post, but I decided to  
25 weight it 50/50. 50 percent the same price

1  
2 target I had before, which was based on the  
3 fundamentals as if it was not going  
4 private, and other 50 percent I weighted  
5 420 dollars, and the note provides my  
6 rationale for doing that, including the  
7 thought process. And it finishes by saying  
8 that details are few and that investors  
9 should be ready for me to potentially lower  
10 my price target again if I needed to remove  
11 the 50 percent go-private weight or  
12 potentially to increase my price target if  
13 it became more clear and maybe take it all  
14 the way to 420.

15 Q. And this note reflects perhaps in  
16 more detail your thoughts regarding the  
17 potential going private transaction as of  
18 the early morning of August 8, 2018?

19 A. Yes.

20 Q. In that opening on page 1 of  
21 Exhibit 15, you state that, "The Tweets we  
22 are talking about on August 7 are  
23 nevertheless declarative statements from  
24 the CEO of a public company which we feel  
25 should be considered seriously. Either

1 funding is secured or it is not secured.

2 Tesla CEO says funding is secured."

3 Do you see that?

4 A. Yes.

5 Q. Does that reflect what we talked  
6 about earlier all the Tweets that took  
7 place on August 7?

8 A. Yes. I was saying that it should  
9 be taken seriously.

10 Q. Do you recall getting any  
11 questions or follow-up from any clients in  
12 response to this note you published on  
13 August 8, 2019?

14 A. On August 8 and August 9, I was  
15 100 percent focused on my auto conference,  
16 hosting, you know, 50 or so companies one  
17 after the other without even ability to  
18 check my e-mail so much.

19 But I saw hundreds of investors  
20 at that conference and probably spoke with  
21 them about it. But I wasn't actively using  
22 my e-mail probably that day like I would  
23 any other day.

24 Q. Sorry, didn't mean to speak over

1  
2 you.

7           A.     Yeah, it's what people were  
8 talking about. It was a lot of buzz at the  
9 conference, a lot of excitement, and  
10 everybody probably chatting about it,  
11 um-hm.

A horizontal bar chart consisting of 15 solid black horizontal bars of varying lengths. The bars are arranged vertically from top to bottom. The lengths of the bars decrease as they move down the page. The first bar is the longest, followed by the fourth, the fifth, and the eighth. The ninth bar is the second shortest, and the thirteenth bar is the third shortest.

| Bar Number | Approximate Length (Relative) |
|------------|-------------------------------|
| 1          | 0.95                          |
| 2          | 0.85                          |
| 3          | 0.80                          |
| 4          | 0.90                          |
| 5          | 0.88                          |
| 6          | 0.82                          |
| 7          | 0.84                          |
| 8          | 0.86                          |
| 9          | 0.78                          |
| 10         | 0.75                          |
| 11         | 0.72                          |
| 12         | 0.74                          |
| 13         | 0.70                          |
| 14         | 0.68                          |
| 15         | 0.65                          |

19 Q. Before we get to that -- after  
20 following your conference, do you recall  
21 what else you were doing to follow Tesla in  
22 the subsequent days?

23           A.     Yes. Certainly I was reading a  
24     lot of headlines and a lot of articles  
25     aggregated through Bloomberg.

1  
2 I recall a very lengthy interview  
3 and article in the New York Times that  
4 entered my thinking. I was checking the  
5 company's website constantly for updates,  
6 but the general -- I didn't have to look  
7 too far, the data aggregating companies  
8 were on top of the latest developments.

19 Q. So I have placed before the  
20 witness a document marked as Exhibit 16, it  
21 is a blog post titled Update on Taking  
22 Tesla Private," and dated August 13, 2018.

23           A.       I see, I'm looking at it now,  
24        yeah.

25 Q. Do you see it? Do you recall

1  
2 seeing this document?

3 A. Yes, I do.

4 Q. Do you recall when you read this  
5 document?

6 A. I'm sure it was the day that it  
7 was posted.

8 Q. Do you recall if this affected  
9 your views on the transaction?

10 A. Yes, this was the beginning of my  
11 very serious doubts about the veracity of  
12 the earlier statements that ultimately  
13 culminated in a second note that I  
14 published.

15 Q. So you didn't publish a note  
16 immediately after reading this blog post  
17 Exhibit 16?

18 A. That's right.

19 Q. What was it about this that began  
20 to create doubts in your mind about the  
21 transaction?

22 A. It appeared to be, you know,  
23 providing cover sort of extricate from  
24 earlier statements and, you know, concerns.

25 So for example, there was a lot

1

2 of reference in the media to the 420 price  
3 which we discussed earlier may have been a  
4 marijuana allusion or at least that was the  
5 media speculation.

6                   And here, instead, there is a  
7 mathematical, more traditional financial  
8 justification for the 420 dollar price, a  
9 20 percent premium over the then roughly  
10 350 dollar spot price. That sounds like a  
11 more typical way that a go-private number  
12 would be formulated as opposed to using a  
13 meme or a pop culture reference.

14                   Also, he is talking about how  
15 he'd come up with that number, as opposed  
16 to the acquirer, which seemed to make it a  
17 little bit less set in stone as well.

18                   And here discussions that there  
19 was an initial meeting of the board of  
20 directors to discuss his proposal. That  
21 was very much walking back, in my mind,  
22 when he had Tweeted earlier that the only  
23 reason why this isn't happening now is it  
24 is contingent on the shareholder vote.

25                   Again, that had a lot of

1  
2 implications. It meant the Tesla board had  
3 not already if formally approved, at least  
4 informally approved it, whereas now we are  
5 sort of reading and hearing that the board  
6 is sort of initially taking up the  
7 go-private proposal.

8 And I believe that there may have  
9 been references -- I don't remember if it  
10 was the New York Times article or elsewhere  
11 in the media that the board of directors  
12 wasn't even aware.

13 So this seemed to be walking  
14 back. And yeah, here he is talking about  
15 why did I make a public announcement,  
16 suggesting that there was some, you know,  
17 deliberative process behind those initial  
18 Tweets, talking about how that way, then he  
19 could reach out to the institutional  
20 investors and talk with them.

21 But again, we were talking  
22 earlier, we weren't really sure what it  
23 meant when he said that investor support  
24 was already confirmed, et cetera.

25 And yeah, why did I say funding

1  
2 was secured? Here is reference to the  
3 Saudi Arabia Sovereign Wealth Fund. Again,  
4 I don't know when I first heard about it  
5 that. I think they may have already been a  
6 shareholder, but here there is -- he talks  
7 about having met with them earlier and  
8 several additional meetings, and he says,  
9 "Obviously, the Saudi sovereign fund would  
10 have more than enough capital needed."

11 So again, there was a lot of  
12 speculation over the previous week what did  
13 he mean by funding secured and here was  
14 sort of a legal kind of justification in  
15 his mind for saying that.

16 Of course funding is secured  
17 because we have been talking to the Saudi  
18 fund and they have so much money. But then  
19 it says here, it says here that he's  
20 following the August 7 announcement, I have  
21 continued to communicate with the managing  
22 director of the Saudi fund. He has  
23 expressed support for proceeding subject to  
24 financial and other due diligence and their  
25 internal review processes for gaining --

1  
2 for obtaining approval.

3 It seemed to be a complete  
4 walk-back of the earlier Tweets that  
5 funding was secured and the only reason why  
6 it wasn't happening was because it was  
7 contingent on a shareholder vote. Here,  
8 now, he is essentially admitting there  
9 wasn't even a proposal, a formal proposal  
10 from the managing director of the Saudi  
11 fund, not evenly managing director, what  
12 about the board of directors, I don't know  
13 who runs the Saudi fund. It seems like  
14 they didn't have their own internal  
15 processes or approvals.

16 This was really the beginning of  
17 the unraveling, I think, of the earlier  
18 Tweets, and you're right, I didn't issue a  
19 note right away, but between this and the  
20 New York Times, I was working up the  
21 courage to do so, and I think that my note  
22 was I believe the first or one of the first  
23 on Wall Street to come out and say that  
24 this wasn't what we were initially told.

25 It did take me another several

1

2 days, I understand.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6                   I've placed before the witness a  
7   document marked as Exhibit 17. This  
8   document Bates stamped JPMS02934.

9                   (Exhibit 17, document Bates  
10          stamped JPMS 00002934 marked for  
11          identification, as of this date.)

12         A.    I see it.

13         Q.    Do you recognize this document?

14         A.    Yes.

15         Q.    What is it?

16         A.    This is part -- called Summer  
17   Lunch Series, and it's just a way for  
18   research management and research sales to  
19   kind of market analysts during a relatively  
20   slower time of year to encourage them to  
21   host, at that time, in-person lunches where  
22   institutional investors would come and hear  
23   our views while we ate lunch. And I  
24   traditionally would do mine right after my  
25   auto conference so that I would have

1  
2 something topical to talk about.

3                   So I chose a number of special  
4 topics, primarily the auto conference. But  
5 also decided to highlight published  
6 research and updated views on events over  
7 the recent past and included Tesla in there  
8 as well as take-aways from the conference.

9                 Q.     So you are the author of this  
10 document?

11                 A.     Yes.



19                 Q.     So if I can refer you to this  
20 document, the page is numbered 28 within  
21 the document. It is Bates stamped JPMS  
22 02961 in Exhibit 17.

23                 A.     Yes.

24                 Q.     This is a slide relating to  
25 Tesla, is that correct?

1  
2       A.     Yes.

3       Q.     And this here looking at the --  
4     in the middle of that page, the sort of  
5     subbullet starts, "Already it seems such a  
6     deal is in trouble."

7                  Do you see that?

8       A.     Yes.

9       Q.     And this goes on to discuss the  
10    August 13 blog post which is what we were  
11    looking at earlier, Exhibit 16?

12      A.     Right. And the New York Times  
13    article.

14      Q.     Oh, that's -- so that was --  
15    right, this is an August 13 New York Times  
16    article?

17      A.     Um-hm.

18      Q.     You have to say yes,  
19    Mr. Brinkman. Sorry.

20      A.     Yes.

21      Q.     At this point, you were still  
22    maintaining your price target of 308?

23      A.     Yes.

24      Q.     You had not seen enough to reduce  
25    that?

2 A. Doubts were growing.

3 Q. You were still maintaining that  
4 price target as of August 14?

5 A. Yes.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10 (Exhibit 18, document Bates  
11 stamped JPMS21193 marked for  
12 identification, as of this date.)

13 Q. I place before the witness a  
14 document marked as Exhibit 18 and Bates  
15 stamped JPMS 21193.

16 Do you recognize this document?

17 A Yes

18 0 What is this document?

19           A.     This is an e-mail that is put out  
20       by a desk or a suborganization within -- I  
21       believe the trading or -- trading research,  
22       research trading department at JP Morgan.  
23       I'm not involved with it.

24 And it basically goes out to, I  
25 believe, institutional investors, the

1  
2 clients of JP Morgan that just provides  
3 updates on what happened overnight in the  
4 Asia market and what are the events that  
5 are going to be happening today and who is  
6 going to be reporting earnings and  
7 reporting things to keep an eye on in the  
8 markets.

[REDACTED]

19 Q. Do you recall receiving this  
20 e-mail, this -- this e-mail on August 17?

21 A. No. I mean, I do receive those  
22 e-mails. I don't always open them. To the  
23 extent that I do, I only look briefly.  
24 Typically this is something that is meant  
25 for generalist investors, whereas I'm a

1  
2 little more particularly focused on the  
3 auto industry. Sometimes I would read it,  
4 sometimes I would not. Mostly I would not,  
5 I would say.

6 Q. If I could refer you to -- I'll  
7 use the Bates stamp here. Bates stamp  
8 21198. It's about six pages in.

9 A. Yeah.

10 You see there is a bullet point  
11 TSLA, which is the ticket for Tesla?

12 A. Um-hm.

13 Q. You have to say yes, I'm afraid.

14 A. Yes, yes.

15 Q. You see there it references, Elon  
16 Musk is interviewed to the New York Times.  
17 Do you see that?

18 A. Yes.

19 Q. Do you recall that interview?

20 A. Yes, I do.

21 Q. Do you recall when you read that  
22 interview?

23 A. I think it was a Sunday night. I  
24 can't remember exactly. I remember he was  
25 said to have teared up in the interview and

1  
2 talked about the stress of the job, and it  
3 was a personal interview, as well as a  
4 business interview, and it received a lot  
5 of attention and I remember reading it. In  
6 the evening. I can't remember.

7 Q. Do you recall -- when you say a  
8 Sunday night, that's when you understood it  
9 was published or that's when you understood  
10 you read it?

11 A. I don't know. I had seen some  
12 references to the 13th. I forget. I just  
13 remember reading a New York Times article  
14 at the time that was very lengthy, very big  
15 article, long article, and it was going  
16 through the whole situation, and it was a  
17 direct personal interview with Elon Musk  
18 and there was an article and story that was  
19 kind of built around it.

20 Q. Why don't we go next to the --  
21 mark as the next exhibit the New York Times  
22 article. I don't want to get ahead of  
23 myself. This will be Exhibit 19.

24 (Exhibit 19, article from New  
25 York Times marked for identification,

1  
2           as of this date.)

3           A.     Yes, this is the one I recall  
4       reading.

[REDACTED]

[REDACTED]

[REDACTED]

8           I placed before the witness a  
9       document marked as Exhibit 19. It is a  
10      printout of a New York Times article. And  
11      this is the New York Times article you were  
12      referring to earlier?

13       A.     Yes.

14       Q.     That you recall reading on a  
15      Sunday evening?

16       A.     I don't remember when. I  
17      remember reading it in detail.

18       Q.     Do you recall reading it soon  
19      after it was published?

20       A.     Yes, I believe so. Right, I  
21      think so, um-hm.

22       Q.     And can you recall what your  
23      reaction was to this story in printed out  
24      here in Exhibit 19?

25       A.     Yeah, there was a lot of just

1  
2 personal intrigue and having been kind of  
3 involved in this story and see it explored  
4 in such an in-depth way with a human  
5 element to it, it was captivating to me, I  
6 remember at the time, and I was referring  
7 to it earlier. I don't know if this is for  
8 sure the one, but it might have been the  
9 article where there was reference to board  
10 of directors not having known about the  
11 go-private Tweet, which certainly would  
12 have been impactful for my research and  
13 understanding of the situation.

14 Q. If you can turn --

15 A. Maybe there were a couple of New  
16 York Times articles and I'm conflating  
17 them, but this one I remember for sure.

18 Q. If we can refer to page the third  
19 page of the exhibit. This is a carry-over.

20 A. "Unusual time to release major  
21 news"?

22 Q. Correct, yes.

23 Do you see it says there, the  
24 next paragraph, "It seemed like better  
25 karma at 420 than at 419"? Do you see

1  
2 that?

3 A. Yes.

4 Q. Did that change your views at all  
5 about how the proposed price of 420 dollars  
6 had been chosen by Mr. Musk?

7 A. I think this was the first time  
8 that he sort of acquiesced that there was  
9 some sort of -- again, it's an allusion to  
10 the marijuana reference.



13 If you go down further down the  
14 page, immediately below the big Tesla  
15 symbol, the article states, "What Mr. Musk  
16 meant by 'funding secured' has become an  
17 important question. These two words helped  
18 propel Tesla's shares higher. That  
19 funding, it turned out, is far from  
20 secure."

21 Do you see that?

22 A. Yes.

23 Q. Do you recall what your reaction  
24 was to reading those words in this New York  
25 Times article?

1

2       A.     I think I was already coming to  
3     the conclusion that it was not secure.

4     So...

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13       Q.     Still Exhibit 19.

14               Halfway into that paragraph, it  
15     says, "Board members blind-sided by the  
16     chief executive's market-moving statement  
17     were angry they had not been briefed, two  
18     people familiar with the matter said."

19               Do you see that there?

20       A.     Yes.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

5            You saw that sentence there in  
6    the New York Times article. Do you recall  
7    reading that sentence?

8            A.     Yes, it was important for me.

9            Q.     OK, why was it important to you?

10          A.     Because it, you know, completely  
11    contradicted the earlier Tweets, including  
12    that the only reason this isn't happening  
13    now is because it is subject to a  
14    shareholder vote.

15           The board of directors would also  
16    need to approve of it, and furthermore,  
17    CEOs just don't come out with announcements  
18    that the company is being taken private or  
19    acquired by another company or even  
20    acquiring another company without the board  
21    of directors being at least aware.

22           So it -- it very much undermined  
23    the veracity of the August 7 Tweets.

[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7 Q. So I place before the witness a  
8 document marked as Exhibit 21. It is an  
9 e-mail Bates -- dated August 17, 2018,  
10 Bates stamped JPMS 4543.

[REDACTED]

[REDACTED]

[REDACTED]

14 Q. Do you recognize this document,  
15 Mr. Brinkman?

16 A. Yes.

17 Q. What is this document?  
18 A. This is an e-mail from myself to  
19 David Kelly who was a junior analyst on my  
20 team at that time and I'm asking for his  
21 assistance in doing the sort of back-office  
22 mechanical process to set up a note and to  
23 paste in sort of the existing valuation  
24 tables and things so that I can go in and  
25 author the note myself.

[REDACTED]

[REDACTED]

4 Q. You see there in the second  
5 sentence there, you say, "Obviously a tough  
6 call."

7 Do you see that?

8 A. Yes.

9 Q. What made this reduction and  
10 price target a tough call?

11 A. As mentioned, I think I was the  
12 first analyst to come out and say -- or one  
13 of the first, that these Tweets weren't  
14 true and essentially it would be tantamount  
15 to say the CEO had lied or mislead  
16 investors which is, you know, something  
17 that's impolitic and I think I handled it  
18 in the best way possible.

19 I never used incendiary language.  
20 My notes are very restrained in how I come  
21 across and I took that balanced approach in  
22 increase in the price target, and to come  
23 out and remove the 420, 50 percent  
24 weighting would be to say, I don't think  
25 this is, you know -- really have any chance

1  
2 of happening. I don't think that this  
3 is -- I don't think funding was secured. I  
4 don't think that, you know -- it is sort of  
5 an acknowledgment of -- it would be  
6 putting -- it would be picked up by all the  
7 media, JP Morgan says that, you know, that  
8 contradicts Elon's statements, calls him  
9 out.

10 I tried to maintain good  
11 relationships with all the companies that I  
12 cover. I wanted to do this in the best and  
13 most responsible and even-handed way. It  
14 was going to be -- it's very difficult do  
15 that though. It's very difficult to come  
16 out and contradict those earlier statements  
17 in a fair and balanced way.

18 And you see the note that I'm  
19 sure we are going to discuss next, that is  
20 the outcome of my best effort there.

21 But I was also, as mentioned, the  
22 first analyst, kind of sticking my neck  
23 out, and yeah, it was a tough and  
24 awkward -- the whole situation was  
25 difficult to know how to respond to and I

1

2 feel I did my best.

The image consists of a series of horizontal black bars of varying lengths, arranged vertically. The bars are solid black and have thin white borders. They are positioned against a white background. The lengths of the bars decrease from top to bottom, creating a descending staircase effect.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8           Q.     I'll place before the witness a  
9     document marked Exhibit 23. And it is a  
10   note research note dated 20 August 2018  
11   Bates stamped JPMS000001.

12               Is that document in front of you?

13           A.     Yes.

14           Q.     Do you recognize this document?

15           A.     Yes.

16           Q.     What this document?

17           A.     This is the second note that I  
18     published on the topic of Tesla potentially  
19     going private and it is essentially undoing  
20     the first note.

21               The first note was to increase  
22     the price target from 195 dollars to 308  
23     dollars by equal-weighting my 195 price  
24     target 50 percent and the go-private offer  
25     of 420 dollars at 50 percent.

1  
2                 This note removes the 420  
3 dollars, and therefore, the 420 dollar 50  
4 percent weighting and, therefore, lowers  
5 the price target back down to 195 dollars  
6 given -- the title of the note is reverting  
7 to valuing TSLA shares on fundamentals  
8 alone, given funding appears to not have  
9 been secured. Price target back to 195  
10 dollars.

11 Q. Once again, this note reflects  
12 your views on the -- on Tesla and the  
13 going-private transaction at the time it  
14 was published in August 20, 2018?

15 A. Yes.

| Term       | Percentage |
|------------|------------|
| GMOs       | ~95%       |
| Organic    | ~90%       |
| Natural    | ~85%       |
| Artificial | ~75%       |
| Organic    | ~70%       |
| Natural    | ~65%       |
| Artificial | ~55%       |
| Organic    | ~50%       |
| Natural    | ~45%       |
| Artificial | ~35%       |

2           Q.     I think you have alluded to a  
3     fair amount of public discussion and  
4     discussion with the investors about what  
5     exactly Mr. Musk's August 7 Tweets meant.

6           Am I correct?

7           A.     Yes.

8           Q.     Are you aware there were other  
9     market participants and investors who  
10    interpreted those Tweets differently than  
11    you did?

12          A.     Yes, the shares rose on the first  
13    day -- not quite the level that -- because  
14    I think I said it was still kind of 9 or 11  
15    percent below the take-out number of 420.

16               So typically when an acquisition  
17    is announced, the shares will go within 1  
18    or 2 or 3 percent with some uncertainty  
19    about regulatory requirements or something.

20               So it did suggest that the market  
21    overall was not 100 percent accepting -- it  
22    had more doubt than a typical take-over or  
23    take-private announcement, and yet, the  
24    shares did rise a lot. So serious  
25    consideration was being given to it.

1  
2           I think my weighting of 50/50  
3 probability was probably a little bit less  
4 constructive than the market's  
5 understanding.

6           Q.     Are you familiar with a group of  
7 analysts at Evercore named George Galliers  
8 G-A-L-L-I-E-R-S, Chris McNally, M-C,  
9 N-A-L-L-Y, and Arndt, A-R-N-D-T  
10 Ellinghorst, E-L-L-I-N-G-H-O-R-S-T? Are  
11 you familiar with them?

12          A.     I'm familiar with the first --  
13 I'm familiar with all three of them. I've  
14 only met I believe the first two.

15               Yes, I know who they are.

16          Q.     Do you recall that team from  
17 Evercore releasing an analyst report on  
18 August 8 of 2018 that said, "Funding  
19 secured should be interpreted as a strong  
20 verbal commitment with funds available and  
21 parties willing to execute quickly.

22          However, it could be less than this"?

23          A.     I did not have access to their  
24 research. Oftentimes, I will read  
25 headlines about other analysts' research.

1

2 As much as I would like to have access to  
3 the research, I typically don't.

4 Q. In any event, I think you agree  
5 with me that different people might have  
6 interpreted Mr. Musk's August 7 Tweets  
7 differently than you did?

8 A. Yes, yes.

2 Q. Before we get to it, I want to  
3 orient you, Mr. Brinkman.

4 You had some discussion with  
5 Mr. Porritt on the question of when you  
6 first became aware that the Tesla board had  
7 been surprised by Mr. Musk's initial  
8 August 7 Tweet, and on that subject,  
9 Mr. Porritt showed you a New York Times  
10 article dated August 16.

11 Do you recall that conversation?

12 A. Yes.

13 Q. We just marked as Exhibit 27 a  
14 New York Times article. Let me know when  
15 you have got it loaded and open in front of  
16 you, please.

17 A. Yes, I see it.

18 Q. So this is a New York Times  
19 article dated August 13, 2018 with the  
20 headline, "Tesla Board Surprised by Elon  
21 Musk's Tweet on Taking Car Maker Private."

22 Do you see that?

23 A. Yes.

24 Q. Do you recall this article?

25 A. I think I'm recalling it now.

1  
2 I'm sure I read it at the time because it  
3 was so relevant. And I did mention earlier  
4 I think there were multiple articles from  
5 the New York Times.

6 Q. Yeah, so I -- you anticipated  
7 some of my questions. So I'm assuming from  
8 our conversation so far that you were  
9 paying close attention to this situation  
10 during this time period, and therefore,  
11 probably would have read this article soon  
12 after it came out?

13 A. I'm actually recalling now in the  
14 earlier document we looked at called Summer  
15 Lunch Series, there was a specific  
16 reference to a August 13, New York Times  
17 article.

18 Q. Yes, so we don't need to go to  
19 that now. You can check one off my list.

20 So would you agree with me that  
21 by August 13, 2018, it was being publicly  
22 reported that Tesla's board had been  
23 surprised by Mr. Musk's initial August 7  
24 Tweet about taking the company private?



3           A.     Yes, this article says that the  
4 board was surprised.

The image consists of a series of horizontal black bars of varying lengths, arranged vertically. The bars are solid black and have thin white borders. They are positioned against a white background. The lengths of the bars vary significantly, with some being very long and others very short. There is no text or other graphical elements present.

10 So are you aware that the  
11 plaintiffs in this case are accusing  
12 Mr. Musk of fraud?

13           A.       I don't know who the plaintiffs  
14       are.   I surmised that, but I don't know  
15       who -- I don't know the details of this  
16       lawsuit.

17 Q. OK. And I'll just tell you that  
18 as a consequence of that, the claim that  
19 the plaintiff is making here is that when  
20 Mr. Musk Tweeted about taking the company  
21 private on August 7th, 2018, he made  
22 statements that he knew were false and he  
23 did so with an intent to mislead investors.

4 Q. So a few things I want to get  
5 clear with you.

6           Would you agree with me,  
7 Mr. Brinkman, that neither back in August  
8 of 2018 nor today would you have known all  
9 of the information that was known to  
10 Mr. Musk about the situation when he made  
11 those Tweets on August 7, 2018?

12 A. Of course, I would not have had  
13 his information for sure.

14 Q. And you wouldn't have any  
15 personal knowledge as to what his intent  
16 was in making those Tweets, correct?

17 A. Correct. I did not speak with  
18 him. I was only operating with information  
19 in the public domain.

20 Q. OK.

21           So now let me turn to Exhibit 22.  
22 It's that August 20, 2018 e-mail. And take  
23 as much time if you need to review the  
24 context, but I'm focused on the  
25 parenthetical in the sentence that begins,

1  
2 "As we explained in the note before."

3                   Towards the end of that sentence  
4 in the parenthetical, you say, "Charitably  
5 interpreted, there was a misunderstanding  
6 on Tesla's CEO Elon Musk's part that the  
7 Saudi Sovereign Wealth Fund was ready to  
8 fund such a transaction although it has  
9 since been clarified through subsequent  
10 discussions between Mr. Musk and the fund  
11 that the fund has not make any decision and  
12 did not commit to any offer."

13                   Do you see that?

14                  A. Yes.

15                  Q. OK. And I understand you're  
16 offering up one potential interpretation of  
17 the situation as you understood it at the  
18 time, correct?

19 [REDACTED] [REDACTED]  
20                  A. That was my interpretation, yes.

21                  Q. And let me suggest a slightly  
22 different interpretation, and just so you  
23 know, the reason I'm going to frame this up  
24 is to ask you whether you considered that  
25 interpretation at the time and also whether

1  
2 you have any facts one way or the other as  
3 to whether this alternative interpretation  
4 is true or false. OK?

5 So the alternative interpretation  
6 I want to ask you to consider is that  
7 during the July 31 meeting with Mr. Musk,  
8 the managing director of the Saudi PIF was  
9 unequivocal in stating the PIF was ready to  
10 support a going-private transaction; that  
11 he had support of the crown prince; and no  
12 further approval was necessary; and then  
13 later, when there was a press storm around  
14 all of these events, the Saudi PIF started  
15 talking then and only then about needing to  
16 go through due diligence and needing to go  
17 through internal approval processes and the  
18 like.

19 Do you understand the scenario  
20 that I've posited for you?

[REDACTED]  
[REDACTED]  
[REDACTED]

24 A. I understand the scenario.

25 Q. Mr. Brinkman, just for the

1  
2 record, when I said PIF, I assume you  
3 understand that I was referring to the  
4 Saudi Public Investment Fund?

5 A. Yes.

6 Q. Which you have alluded to  
7 previously as the Sovereign Wealth Fund or  
8 the sovereign fund?

9 A. Yes.

10 Q. OK. Going back to the scenario  
11 that I have posited for you, do you recall  
12 whether you considered that possibility  
13 when you were speaking about whether to  
14 revise your price target?

[REDACTED] [REDACTED]

[REDACTED]

17 A. I can't recall necessarily my  
18 thinking at the time, but my interpretation  
19 was that, yeah, I guess what you are  
20 saying, that the representative of the fund  
21 made statements to Mr. Musk that said we  
22 have the approvals when he didn't have the  
23 approvals and I did not consider that.

24 Q. Do you have any personal  
25 knowledge one way or the other as to what

1  
2 the managing director of the Saudi public  
3 investor fund said to Mr. Musk during that  
4 meeting?

5 A. No, I don't know the details of  
6 their conversation, I was only working off  
7 Mr. Musk's statements later saying that he  
8 has continued to speak with the  
9 representative and that the representative  
10 is saying that we need to get these  
11 approvals.

12 I assumed that meant that the  
13 approvals weren't previously there.

14 Q. OK. But that was your assumption  
15 or interpretation of those later  
16 statements, right?

17 A. Yes, um-hm. Yes.

18 Q. I want to turn to a slightly  
19 different subject, although it's similar in  
20 the sense that I want to make sure we are  
21 very clear about what facts you do and do  
22 not have personal knowledge of.

23 Again, I apologize, I know it is  
24 tedious. I appreciate your patience.

25 We haven't talked today yet about

1  
2 the ultimate reason or reasons why Mr. Musk  
3 eventually decided not to pursue a  
4 going-private transaction, but that's the  
5 topic I would like to discuss with you.

6                 The question is, do you have any  
7 personal knowledge as to what were the  
8 reasons or what was the reason why Mr. Musk  
9 ultimately decided not to further pursue a  
10 going-private transaction?

11                 A.         I would have only had the  
12 knowledge that was available to everybody  
13 else reading the statements from the  
14 company and Mr. Musk, et cetera.

15                 Q.         And just changing the focus a  
16 little bit to the question of whether or  
17 not funding was or would have been  
18 available had Mr. Musk and others decided  
19 to pursue the transaction, do you have any  
20 personal knowledge as to whether or not  
21 funding was or would have been available in  
22 the event that Mr. Musk and others had  
23 decided instead to go ahead and pursue a  
24 potential going-private transaction?

25                 A.         I don't have -- I didn't have any

1  
2 access to any special nonpublicly-available  
3 information.

I mentioned earlier one possible scenario I had considered was that maybe the funding didn't need to be arranged because it was already available; that such a deep pocketed acquirer such as the Sovereign Wealth Fund or the Public Investment Fund of Saudi Arabia, they wouldn't need to secure funding because it was already secured.

13 I did mention that as one  
14 possibility, but I was only working off my  
15 own extrapolation and understanding based  
16 upon publicly available information.

| Term       | Percentage |
|------------|------------|
| GMOs       | ~85%       |
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| Natural    | ~90%       |
| Artificial | ~75%       |
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| Artificial | ~75%       |